

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**STEPHANIE LOWE,**

**Plaintiff,**

**v.**

**No. 14-cv-0775 KG/SMV**

**BNSF RAILWAY COMPANY,**

**Defendant.**

**ORDER DENYING IN PART AND RESERVING RULING IN PART ON  
DEFENDANT BNSF RAILWAY COMPANY'S MOTION FOR SANCTIONS FOR  
PLAINTIFF'S ALLEGED SPOILIATION OF EVIDENCE**

THIS MATTER is before the Court on Defendant BNSF Railway Company's Motion for Sanctions for Plaintiff's Spoliation of Evidence [Doc. 74] ("Motion"), filed on July 15, 2015. Plaintiff responded on August 4, 2015. [Doc. 84]. Defendant replied on August 19, 2015. [Doc. 95]. The Court heard oral argument on September 3, 2015. For the reasons stated on the record at the hearing, the Court will deny the Motion as to the floor panels and reserve ruling on the Motion as to the photographs of Plaintiff's bruising.

Defendant may take a supplemental *telephonic* deposition of Plaintiff regarding the alleged photographs of her bruising, and nothing else. The on-record duration may last no longer than 30 minutes. If, after the supplemental deposition, Defendant still requires a ruling on the Motion as to the alleged photographs of the bruising, it shall submit a supplemental brief, not exceeding five pages, no later than **November 2, 2015**. Plaintiff may file a response no later than **November 12, 2015**, and not exceeding five pages. No reply will be permitted. However, if after the supplemental deposition, Defendant does not require a ruling on the Motion as to the

alleged photographs of the bruising, Defendant shall file a notice of withdrawal of that portion of the Motion, no later than **November 2, 2015**. The parties will bear their own costs and fees with respect to the Motion.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Defendant BNSF Railway Company's Motion for Sanctions for Plaintiff's Spoliation of Evidence [Doc. 74] is **DENIED** as to the floor panels.

**IT IS FURTHER ORDERED** that ruling is **RESERVED** on the Motion as to the alleged photographs of the bruising.

**IT IS SO ORDERED.**



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STEPHAN M. VIDMAR  
United States Magistrate Judge